



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: September 1, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: 201747009
Release Date: 11/24/2017

UIL: 501.33-00, 501.35-00, 501.36-00

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: July 13, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
C = State

UIL:

501.33-00
501.35-00
501.36-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You were incorporated on B as a non-profit corporation under C law. Your Articles of Incorporation state you are organized exclusively for charitable, educational, religious, or scientific purposes within the meaning of Section 501(c)(3) of the Code. You have a dissolution clause that requires your assets be disposed of exclusively for Section 501(c)(3) purposes.

You were previously granted exemption under Section 501(c)(3) of the Code. Your exemption was revoked due to the non-filing of Form 990 for three consecutive years. Accordingly, you submitted this new Form 1023, *Application for Recognition of Exemption*, requesting retroactive reinstatement.

Your application indicates that your primary activity is the operation of a farmers' market which creates an opportunity for local producers to sell their goods. The items sold include vegetables, fruit, plant bedding and plants, bread, eggs, honey, jelly, jam, nuts, refrigerated meat, handmade candles/soap and yarn.

You will register and collect membership fees and manage the marketing (radio, newspaper and social media) for the farmers' market. The operating season is May to October on Saturday mornings and one day mid-week.

You provided a breakdown of your activities, as follows:

- Marketing on social media, in the newspaper and radio – 15%
- Meeting monthly with the Board of Directors – 10%
- Setting up the market and hours of operation – 75%

Vendors (producers) that sell goods at the market pay membership fees. The vendors can choose to pay a full season fee, or a daily space fee. Your Board of Directors determined these fees, which are based upon area markets in neighboring communities.

The local government is not involved with the operation of the market nor does the local community have any involvement, other than making purchases from the vendors. The market is operated exclusively by your volunteer Board of Directors. One board member is also a vendor.

The market facility is the local county fairgrounds. Vendor training is provided by the local university agriculture extension office. The training includes marketing suggestions and information regarding pest control and awareness. No educational programs are provided to the community.

You conduct two annual “Farm to Table” meals to raise money to support the market. A large portion of your revenue is derived from vendor fees. Your expenses are limited to marketing and operating costs for the market.

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in Section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in Section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides that the term “educational,” as used in Section 501(c)(3) of the Code, relates to the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 61-170, 1961-2 C.B. 112, describes an association composed of professional private duty nurses and practical nurses which supports and operates a nurses' registry primarily to afford greater employment opportunities for its members which was not entitled to exemption under in Section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Rev. Rul. 67-216, 1967-2 C.B. 180, describes a nonprofit organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products may qualify for exemption under Section 501(c)(3) of the Code. The principal activities and exhibits of the fair are educational. In addition, the overall activities of the fair are conducted in such a fashion and on such subjects as will enlighten the viewers and participants on the newest and best techniques of farming, and on other matters useful and beneficial to them and to the community.

In Rev. Rul. 71-395, 1971-2 C.B. 228, a cooperative art gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works and did not qualify for exemption under Section 501(c)(3) of the Code. It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

Rev. Rul. 80-287, 1980-2 C.B. 185, involved a non-profit lawyer referral services that arranges, at the request of any member of the public, an initial half-hour appointment for a nominal charge with a lawyer whose name is on an approved list maintained by the organization. As a general rule, providing services of an ordinary commercial nature in a community, even though the undertaking is conducted on a nonprofit basis, is not regarded as conferring a charitable benefit on the community unless the service directly accomplishes one of the established categories of charitable purposes. The organization's activities are directed toward assisting individuals in obtaining preventive or remedial legal services covering the gamut of everyday legal problems and, as such, are not specifically designed to eliminate prejudice or discrimination or to defend human and civil rights secured by law. Therefore, the lawyer referral service does not confer a charitable benefit on the community. Although the lawyer referral service provides some public benefit, a substantial purpose of the program is promotion of the legal profession.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Application of law

You are not described in Section 501(c)(3) of the Code as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you fail the operational test. Specifically, you are operated for the purpose of facilitating sales for the benefit of vendors at your farmers' market. Therefore, you do not operate exclusively for exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

Your primary purpose of providing space for vendors to sell their goods is not educational. You are distinguished from Rev. Rul. 67-216 because you do not provide any classes, workshops or other educational materials to the general public. While the vendor training, which is provided by a local agricultural extension office, may be considered educational, it is incidental to your purpose of providing space for your vendors to sell their goods. A very minimal amount, if any, of your time and resources are devoted to activities which could be classified as educational within the meaning of Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i).

Vendors participating in your market pay a fee to rent their space and then are free to set sales prices to maximize sales and profits for their own benefit. You are operated to further the private interests of your vendors, which precludes exemption under Section 501(c)(3) of the Code as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You provide a venue for selling items that advances private interests, similar to the cooperative art gallery described in Rev. Rul. 71-395. As explained in this ruling, an organization that operates for the purpose of exhibiting and promoting the sales of products for the benefit of private individuals does not qualify for exemption under Section 501(c)(3) of the Code.

You are similar to the organizations described in Rev. Rul. 61-170 and Rev. Rul. 80-287. In your case, substantially all of your resources are used to arrange a market for vendors. While the public does benefit tangentially from an increase in market selection, the overall purpose of your organization is to serve and benefit your members and vendors selling at the market and not the general public. You provide a market for your vendors and expand sales opportunities with no charitable benefit to the community, which precludes you from exemption under Section 501(c)(3) of the Code.

Your activities consist of the operation of a farmers' market, along with related administrative, marketing and fundraising functions. As held in Better Business Bureau, a single non-exempt purpose, if substantial, will preclude tax exemption under Section 501(c)(3) of the Code. Accordingly, your substantial, non-exempt purpose of operating a farmers' market, which provides a private benefit to the vendors, precludes you from exemption under Section 501(c)(3).

Conclusion

You do not qualify for recognition of exemption under Section 501(c)(3) of the Code because you fail the operational test. You are operating for the private benefit of your vendors by providing them with a forum to sell their products to the public. This is a substantial, non-exempt purpose, which precludes you from exemption under Section 501(c)(3).

Accordingly, you must file federal tax returns and contributions to you are not deductible under Section 170 of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on

- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892